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EQUITY JURISDICTION OVER THE PERSON AND PROPERTY OF INCOMPETENT PERSONS.

Insanity as a question of jurisprudence, may be resolved into three sub-divisions, as follows:

First. As to the competency of the party alleged to be *non compos mentis,* to control and manage his person and estate;

Second. Whether the party is sufficiently *compos mentis* to execute and perform his civil obligations; whether his will, testament or contract should be held valid;

Third. Whether a person alleged to be *non compos mentis,* is, or is not, a responsible agent.

The primary object to be considered in this article is the endeavor to demonstrate, that the courts of chancery possess the jurisdictional power to take under control the property of persons of unsound mind, whose mental vigor has been impaired, by weakness or disease, to such an extent as to incapacitate them from its management or control; and that the statutory creation of a similar jurisdiction in the common law courts does not take away from the courts of chancery, the rightful exercise of this equitable function. Durett *v.* Davis, 24 Gratt 302; Ruffin *v.* Burk, 90 Va. 708; Kelly *v.* Lehigh, 98 Va. 405; Corrothers *v.* Board, 16 W. Va. 527; Filler *v.* Tyler, 91 Va. 458. And in order to effect the purpose as above indicated, frequent references will be made to established authorities, as well as citations from decisions of some of the most illustrious ornaments of the judiciary of this country and England.

The subject involves property rights, and therefore it will be readily admitted to be one of interest and importance; but not rising to the gravity growing out of the question of judicial inquiry, in cases where insanity has been urged as an exculpatory plea, in the trials for criminal offenses. As civilization advances, the time may come when the law in relation to the plea of insanity in criminal cases will be so altered, as to prescribe,

for the investigation of cases in which it is important to determine the existence, or non-existence, of aberration of mind, a distinct and separate tribunal to be presided over by persons whose training and investigation have been specifically directed to the study of insanity and mental disorders. By our present system of trial in criminal insanity cases, the judge and the jury may never have had the slightest opportunity of studying the diseases of the mind, and they must depend largely upon the testimony of medical men, and even they too may never have had the opportunity, or inclination, to investigate the subject, and for that reason may be totally unable to form an accurate judgment of the presence of insanity in any case in which it has been alleged to exist, yet under this method of procedure and by such evidence, a human being deprived of his reasoning faculties and totally devoid of control over his action, may be consigned to an ignominious death. As a logical proposition, it appears that no twelve men should be considered competent to give an opinion on the complicated question of insanity, who are all ignorant of the characteristics and peculiarities of a disordered intellect, and of the strange caprices and pathological conditions of the human mind, together with the influences of external and internal agencies in working its manifestations.

It is frequently the case that a jury has to be guided in its deliberation on the question of insanity by the evidence of medical men, who readily and honestly admit that they have given the subject but little consideration, and, therefore, their knowledge upon the question must be presumed to come by intuition. Yet in the present cases of criminal trials, where insanity is pleaded as a matter of defense, the jury, none of whom may have ever seen an insane person, or who have previously given a moment's consideration to the subject, and guided by evidence of physicians who testify that they have not given special consideration to the subject of mental diseases, are called upon and must determine whether the mind in a particular case, is sufficiently free from disorder to enable its possessor to form an accurate judgment between right and wrong. No man is expected to pass an opinion, worthy of serious consideration, upon a complicated question of electricity, who has not given special attention to that science, and neither would the evidence of the leading the-

ologian be of great respect on an intricate matter of surgery. It would be entertained as extremely ridiculous to bring forth such testimony in support of any case, requiring for its elucidation a profound knowledge of electricity or surgery. In the support and on the defense of the plea of insanity, the jury must depend principally upon the evidence of medical men, and if such men have not given serious investigation to the subject of the manifestation of mental derangements, it can be seen how perilous is the position of the unhappy prisoner, although an irresponsible agent, charged with the commission of a capital crime. And the medical men, even though they may have given profound consideration to the subject of mental aberrations, are very frequently placed at a disadvantage in giving testimony due to the very broad latitude allowed counsel in their examination. The medical man, when called upon to give evidence in insanity cases, should remember that he has nothing to do with the legal definition of the word. He should not be expected to say in every case whether the party alleged to be insane, is, or is not, competent to draw a line of demarcation between right and wrong. The real point to which his testimony should be directed, is, had the alleged insane person, at the time of the commission of the offence for which he is being tried, sufficient control of his action? The most profound metaphysical or medical information will enable no man to form an accurate judgment of a person's capability of distinguishing between what he may have considered right or wrong, good or evil. The medical men often get themselves confounded by venturing the attempt to define the term—insanity. Counsel knowing the difficulty, the obscurity of the subject, and conscious of the obstructions with which the medical man has to contend in arriving at anything like a correct and precise definition, unfairly, in their examination, endeavor to have them specifically define the term, and then, by showing the fallacy of the definition, seek to weaken and discredit the effect of the evidence. The professional witness, not unfrequently, by a vain and ostentatious display of metaphysical and medical learning, attempts to give the legal definition of insanity, and generally before his examination is concluded, he has been convinced it would have been a wiser course to have followed, in admitting without reluctance, his

incapacity of defining the term, for he will most surely have discovered that there is nothing as easily seized upon by counsel as a definition. Dr. Haslam, a profound student of our medical jurisprudence, says, that,

> "It is not the province of the medical witness to pronounce an opinion as to the prisoner's capability of distinguishing right from wrong. It is the duty of the medical man, when called upon to give evidence in a court of law, to state whether he considers insanity to be present in any case, not to ascertain the quantity of reason, which the person imputed to be insane, may or may not possess. If it should be presumed that any medical practitioner is able to penetrate into the recesses of a lunatic's mind, at the moment he committed the outrage; to view the internal play of obtruding thoughts, and contending motives, and to depose that he knew the good and evil, right and wrong, he was about to commit, it must be confessed, that such knowledge is beyond the circuit of our attainment. It is sufficient for the practitioner to know that the person's mind is deranged, and such a state of insanity will be sufficient to account for the irregularity of his actions; and that in a sound mind, the same conduct would be deemed criminal. If violence be inflicted by such a person during a paroxysm of rage, there is no acuteness of metaphysical investigation which can trace the successions of thoughts, and the impulses by which he is goaded for the accomplishment of his purpose."

Definitions are constantly sought after in courts of law to be given by professional and medical witnesses, however, it is scarcely possible to obtain a definition of the effect in feeling and manifestation, in a diseased mind, which can be sufficiently comprehensive to include all the various cases of insane affections. It may be contended that it is only the province of the trial judge, to state to the jury the law of criminal insanity, and that it is not necessary that he should be to any extent conversant on the peculiar characteristics of mental disorders. It, however, seems more in accord with reason that in order to do justice, in such cases, it is requisite that not only the medical men introduced as witnesses, but, also, the judge and the jury should have some information on the subject of insanity. Lord Hale, appears to have entertained extreme views on the subject

of insanity, gathered from his instructions to juries relative to the legal irresponsibility of a person of unsound mind, when he says,

> "In order to exculpate a person from the penalty attached to criminal offences, there must be a defect of the understanding, unequivocal and plain, not the mere impulse of passion, or of idle frantic humor, or unaccountable mode of action, but an absolute dispossession of the free and natural agency of the human mind."

Yet this distinguished jurist divides insanity into two kinds, namely, "There is a partial insanity of the mind, and second, a total insanity." Lord Coke makes four divisions, as follows:

> "*Idiota,* who from his nativity, by perpetual infirmity, is *non compos mentis;* he that by sickness, grief, or other accident, wholly loses his memory and understanding; and a lunatic, that some times has understanding and some times not; *aliquendo gaudet; lucidus intervallis;* and therefore is called *non compos mentis* as long as he hath not understanding, he that by his own act for a time deprives himself of his memory and understanding; or he that is a drunkard—*demon voluntarius.*"

Lord Chief Justice Mansfield, in discussing the subject of insanity in the trial of Bellingham for the murder of Percival, said,

> "The law is extremely clear. If a man was deprived of all power of reasoning, so as not to be able to distinguish whether it was right or wrong to commit the most wicked or the most innocent transaction, he could not certainly commit an act against the law."

Lord Erskine, considered the dicta of Lords Coke and Hale, that in order to protect a person from criminal responsibility, there must be a "total deprivation of memory and understanding," as untenable, and appears to rest on the theory that "delusion" is the real test of insanity. Lord Lyndhurst considered the test of insanity, as an excuse for the commission of a criminal offence, the unconsciousness of committing an offence against the laws of God and nature. Lord Hale adopts the view that there is a distinction between partial and total insanity, and that total insanity alone can extract the criminal from the full penalty of the law. Georget, a very distinguished French au-

thority on insanity, especially in its relation to medical jurisprudence, disapproves the dictum of Lord Hale, in the following language:

> "This writer appears professedly to consider property of higher value than human life. There is then no excuse for the unfortunate lunatic, who in a paroxysm commits a reprehensible action, even though it should appear to be the result of his particular illusion; and yet the civil act of the same individual is to be annulled."

The tests of insanity as established by the dicta of the judges, have not invariably guided the jury in its determination. And this departure of the jury is no real reflection upon its intelligence, as so meagre is the knowledge of the condition of the human mind, that it is impossible to be governed by the dictum of the most learned jurist as laid down in a specific case, so as to be infallible, as a rule controlling the determination of the degree in which the mind, in another case, is complicated in its disorder. None of the phenomena of human nature is more imperfectly understood, more difficult of penetration, and over which hangs a more impenetrable veil, than the phenomena of mental aberration, and for that reason it is a matter of impossibility to correctly and minutely describe the line of demarcation between partial and total insanity. So very little is known of the workings of the human mind, in healthy or morbid states, that it is simply an impossibility to detect the line dividing responsibility and irresponsibility, or where the one begins and the other terminates, when the endeavor is made to distinguish the degree of mental aberration. Yet in many of our jurisdictions the court and the jury has to determine the degree of mental unsoundness, in cases of criminal procedure, where the plea of insanity is brought in issue as an exculpatory excuse, in felony trials. And in such forums this plea is made at the bar of judicial tribunals, the presiding judge is required to instruct the jury, and in doing so, frequently refers to the dicta of other courts, and quotes their definition or description of insanity, as a test of the presence of mental disorder, as a guide for the jury in the particular case under consideration, in which the malady is alleged to exist. Do the courts at this day know more on the subject of insanity, than the judges in the days of

Coke, Mansfield and Erskine? If so, why cite their dicta, whose information on the subject was extremely circumscribed? Even the judges of our day have no uniform and clearly defined rules on the subject, and this may in some measure result from their varied efforts to define the term. Insanity in its Protean forms admits of no concise definition. It is not in the grasp of the human mind to embody, within the limits of a definition, all the peculiar and characteristic symptoms of mental derangement. The disease assumes so many forms, and manifests itself in such multiple shapes, that it is beyond human power to give even the semblance of a correct and safe definition, that may be used as a standard in doubtful cases of a deranged mind.

The principles adopted by many jurisdictions, by which criminal jurisprudence is guided in cases of insanity, are the capability of distinguishing right from wrong, accompanied by the resisting knowledge that the crime, with which the party stands accused, is an offence against the laws of God and his country. This power of "distinguishing between right and wrong" should not be the invariable test of insanity in all cases of criminal trials. A person may be competent to draw a correct distinction between right and wrong, and yet labor under a form of insanity, which should protect him from legal and moral responsibility. This doctrine of "irresistible impulse," while denied in State *v.* Harrison, 15 S. E. 982; State *v.* Maier, Id. 991; and People *v.* Hain, 62 Cal. 120, 45 Am. Rep. 651, was, if not fully recognized, impliedly held in Dejarnette *v.* Commonwealth, 75 Va. 867, and in Thurman *v.* Commonwealth, 107 Va. 912. Driven by an irresistible impulse, a person may be guilty of the commission of a crime, the most abhorrent to his nature, and he often struggles against this horrible and unnatural impelling force, and has been known to incarcerate himself to avoid the possibility of indulging in his atrocious desire, therefore, fully conscious that he is committing an act that is both wrong in the sight of God and man. If the test of distinguishing right and wrong were rigidly applied in such cases, the unfortunates, maniacs though they may be, would still be held strictly amenable to the law. Sir. John Nicholl adopts the view of Lord Hale in drawing a legal distinction between the degree of mental un-

soundness, which affects the civil obligations and insanity, which annuls criminal responsibility. This doctrine seems to have met the approval of a majority of the Courts of the United States, both State and Federal.

Dr. Haslam has defined insanity to be "false belief is the essence of insanity." Lord Erskine calls it "a delusive image," and Dr. Andrew Combe says, "It is the prolonged departure, without any adequate external cause, from the state of feeling and modes of thinking usual to the individual, when in health," and this definition seems to be approved in the case of Commonwealth *v.* Haskell, 2 Brewst. 491. Our Supreme Court of Appeals adopted with approval, the definition of Judge Story, that "Insanity is the absence of that reason which includes responsibility." Boswell *v.* Commonwealth, 20 Gratt. 873; and likewise, impliedly approved in Baccigalupo *v.* Commonwealth, 33 Gratt. 807. The commonly adopted definition is that it consists of an absolute depravity of all reason and consciousness. This is far from being a correct definition as observation has shown the *non compos mentis,* that is, the insane person, has frequently possessed both of these mental qualities. Locke defines a "madman" to be one who reasons correctly from false premises. This definition will include a very large number generally presumed to be entirely sane. The Indiana Court defines the terms, as follows: "Insanity is the absence of reason, thought and comprehension." Somers *v.* Humphrey, 24 Ind. 260. In Maine, "it signifies any derangement of the mind, that deprives it of the power to reason or will intelligently." Johnson *v.* Ins. Co., 83 Me. 182, 22 Alt. Rep. 107; and in Michigan, an insane person "is one unsound in mind; mad; deranged." Croswell *v.* People, 13 Mich. 435, 87 Am. Dec. 774. It is held by the New York Court that "Insanity is a mental disease, and also implies disease or congenital defect in the brain, and within the meaning of an insurance contract one insane cannot be deemed in good health." McNiel *v.* Southern, etc., Ass. 40 App. Div. 581, 58 N. Y. Supp. 119. It was determined in the case of Blackstone *v.* Standard Life, etc., Co., 74 Mich. 592, 42 N. W. 162, that "Insanity is a disease or disordered condition or malefaction of the physical organs through which the mind receives impressions or manifests its operation." And in Haile's

Curator *v.* Texas & Pac. Ry. Co., 60 Fed. 557, 9 C. C. A. 143, 23 L. A. R. 774, and in State *v.* Felter, 255 Iowa 67, it was held that insanity is "a disease of the mind, the existence of which is a question of fact." The Illinois Court has held that "a disease of all the (mental) organs causes total insanity, while of one or more, partial insanity only." Hoops *v.* People, 31 Ill. 385, 83 Am. Dec. 231. Waters *v.* Connecticut Ins. Co., 2 Fed. 892, adopts as a definition, as an authority, Harmond on Diseases of the Nervous System, as follows:—"It is such a derangement of the mental faculties that the individual has lost the power of reasoning correctly." This is practically Locke's definition, and will embrace a very large class of individuals generally considered sane. The Supreme Court of the United States approves as a definition of insanity, the language of 1 Whart. & S. Med. Jur. Sec. 257, to the effect that:

> "Insanity is a disease of the mind, which assumes as many and various forms as there are shades of difference in human character. It is, as has well been said, a condition which impresses itself as an aggregate on the observer, and the opinion of one personally cognizant of the minute circumstances making up that aggregate." Conn. Mut. Life Ins. Co. *v.* Lathrop, 111 U. S. 612, 28 L. Ed. 586.

The New Jersey Court attempts to differentiate between insanity and ignorance, when it says, "As distinguished from 'Ignorance,' it is an incapacity to act perfectly, while ignorance is the never having acted, though perfectly capable of so doing." Meeker *v.* Boylan, 28 N. J. Law, 279. In many of the jurisdictions, insanity, when used as a defence for crime, has been held to be the incapacity of controlling volition. State *v.* Reidell (Del.), 14 Atl. 550; Davis *v.* United States, 165 U. S. 373, 41 L. Ed. 750; Butler *v.* State, 102 Wis. 364, 78 N. W. 590; Rather *v.* State, 25 Tex. App. 623, 9 S. W. 39; Lowe *v.* State, 118 Wis. 641, 96 N. W. 417. The Vermont Court has adopted the definition of Mr. Bishop, as laid down in Bish. New Cr. Law, Sec. 396a, where it is said, "One is insane, who from whatever cause is incompetent to have the criminal intent, or who is incapable of so controlling his volition as to avoid doing the forbidden thing." Doherty *v.* State, 73 Va. 380, 50 Atl. 1113. The following courts appear to have adopted the dictum

of Lord Chief Justice Mansfield, that is, the incapacity to distinguish between right and wrong, when insanity can be successfully pleaded as an exculpatory plea, in the matter of a defence to the commission of a crime. In re Guiteau, 2 Fed. 892; State *v.* Redemeier, 71 Mo. 173, 36 Am. Rep. 462; People *v.* Finley, 38 Mich. 482; People *v.* Hain, 63 Cal. 120, 45 Am. Rep. 651; State *v.* Ferrer, 1 Ohio Dec. 428; Cannon *v.* State, 41 Tex. Cr. R. 467; Carr *v.* State, 96 Ga. 284, 22 S. E. 570; Wilcox *v.* State, 94 Tenn. 106, 28 S. W. 312; State *v.* Knight, 95 Me. 467, 50 Atl. 276; State *v.* Spivy, 132 N. C. 989, 43 S. E. 475; State *v.* Privitt, 175 Mo. 207, 75 S. W. 457; Hotema *v.* United States, 186 U. S. 413, 46 L. Ed. 1225; Spencer *v.* State, 69 Md. 28, 13 Atl. 809. Some of the cases hold, approving the doctrine as laid down in 2 Tayl. Med. Jur., page 479, that, medically speaking, there are two forms of insanity, moral and intellectual, but in law there is only one form; and that moral insanity is not admitted as an exculpatory plea to bar responsibility for civil or criminal acts, except in so far as it may be accompanied by intellectual disturbances. Spencer *v.* State, supra; and United States *v.* McGlue, 26 Fed. Cas. 1093. There are cases adhering to the test, as established by Sir John Nicholl, that the term "Insanity" is broad enough to include every species of mental aberration or sickness of mind, in which there is the presence of "insane delusion." State *v.* Wilner, 40 Wis. 304; Dew *v.* Clark, 3 Addams, 79; State *v.* Jones, 50 N. H. 369, 9 Am. Rep. 242; Boarman *v.* Woodman, 47 N. H. 120; Gass' Heirs *v.* Gass' Ex'ors, 3 Hump. 278. There are statutory definitions of the term, "Insane person." In Virginia, Code 1904, Sec. 5, Cl. 5, it is said, "The words, 'insane person,' shall be construed to include every one who is an idiot, lunatic, *non compos mentis,* or deranged." A very able American authority in discussing the term, insanity, has stated that, "No definition can include all varieties of disorder, but the power which is most manifestly deficient in the insane is generally the controlling power of the will." Francke *v.* His Wife, 29 La. Ann. 302. It will appear from an examination of the case of Hiett *v.* Shull, 36 W. Va. 563, 15 S. E. R. 146, that the West Virginia Court has attempted to give definitions of the terms, "insane person," "idiot," "lunatic," "*non compos,*" "senile dementia," "deranged" and "im-

becile." "Insanity" has been defined as a generic term for all unsound and deranged conditions of the mind. Burnham *v.* Mitchell, 34 Wis. 117; Jacks *v.* Estee, 139 Cal. 507, 73 Pac. Rep. 247; Warner *v.* State, 114 Ind. 137, 16 N. E. 189.

The Virginia Supreme Court of Appeals has held that insanity is available as an exculpatory plea, if the accused in committing the crime, "was controlled by an irresistible impulse; in other words, was impelled by an insane impulse." Dejarnette's Case and Thurman *v.* Commonwealth, supra. There are cases holding that, even if driven by an irresistible impulse, if the accused was capable of distinguishing between right and wrong, the plea is not available. People *v.* Hubert, 119 Cal. 41, 63 Am. St. R. 69; Genz *v.* State, 59 N. J. L. 488, 59 Am. St. R. 619; State *v.* Alexander, 30 S. C. 74, 14 Am. St. R. 879; Flannagan *v.* People, 52 N. Y. 467; Cunningham *v.* State, 56 Miss. 269, 31 Am. Rep. 300; Parson *v.* State, 81 Ala. 577, 60 Am. Rep. 193.

It would be unreasonable to give unqualified adherence to the dogma that, in every case of mental derangement, regardless of the character or degree, the person alleged to be insane, should be placed beyond the pale of the law in criminal cases. If insanity is clearly proven, a *prima facie* case is made out in favor of the accused; but because a person, who is charged with a crime, is shown to be strange in his character, or irrational in his conduct, these characteristics alone should not be held to screen him from the penalty awarded by law for his criminal offences. Such a doctrine is unphilosophical, untenable, and opposed to the safety and welfare of society.

[TO BE CONCLUDED.]

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SIDNEY J. DUDLEY.